

But it is argued that, inasmuch as an appeal from an assessment of this kind could not be carried beyond our provincial Court of Appeal, I should follow, not the decision of the Supreme Court of Canada—where a case of this kind, it is said, could not be taken—but the decision in *Leprohon v. City of Ottawa*, 2 A.R. 522, in which it was held that a provincial Legislature has no power to impose a tax upon the official income of an officer of the Dominion Government, or to confer such a power on the municipalities. The argument is not based on fact, to begin with. New Brunswick is working under the same constitution as Ontario. The question of the legality of assessments of this kind may reach the Supreme Court from any Province in the Dominion. But, aside from this, I cannot accept this view of my duty. I have indicated what I conceive to be the power of the Legislature; and in any case I am bound by the decision of the Supreme Court.

In *Victorian Railways Commissioners v. Coultas* (1888), 13 App. Cas. 222, the Privy Council pronounced against damages occasioned by "nervous shock." In *Bell v. Great Northern R.W. Co. of Ireland* (1890), 26 L.R. Ir. 428, and *Dulieu v. White & Sons*, [1901] 2 K.B. 669, the Judges refused to follow the *Coultas* case, as they were not bound by it, and the Privy Council decision was severely criticised by eminent legal writers and in legal publications; but when, subsequent to all this, the question came up in *Henderson v. Canada Atlantic R.W. Co.* (1898), 25 A.R. 437, our Court followed the Privy Council—although it was not a case which could be taken to the Privy Council—and the reason was given by Mr. Justice Moss, delivering the judgment of the Court, at p. 445, as follows: "Whatever weight may or ought to be given to these views by other Courts, it is incumbent on this Court to accept and follow that case (the *Coultas* case) as a decision of the ultimate Court of Appeal for this country."

I have nothing to do with where the case is carried; what I have to do is to adopt the law as declared by the highest of our Courts—the Privy Council—if I can find a case, and so back through the Courts until I come to Judges of "co-ordinate authority," in conformity with the principle of sec. 32 of the Judicature Act. Anything else would be a scandal. Could a Judge refuse to be governed by the decision of the Supreme Court or Privy Council because the case being tried was not appealable to these tribunals?

*Webb v. Outtrim*, [1907] A.C. 81, was a good deal relied upon in the *St. John* case, and I think might be said to be adopted